

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

DAVID LEE FLEMING,	)	C/A No.: 5:11-cv-0304 DCN
	)	
Plaintiff,	)	
	)	
vs.	)	<b><u>ORDER</u></b>
	)	
CAROLYN W. COLVIN, ACTING	)	
COMMISSIONER OF SOCIAL SECURITY	)	
ADMINISTRATION,	)	
	)	
Defendant.	)	

The above-referenced Social Security case is before this court upon the plaintiff's petition for attorney fees pursuant to 42 U.S.C. §406(b)(1). Plaintiff filed this petition on July 11, 2014. Because these fees are paid from the claimant's benefits rather than from agency funds, defendant is not a party to §406(b) fee awards. In this case, defendant filed a response stating that she had no objection to the motion. In addition, plaintiff's attorney filed an earlier motion for attorneys fees under the Equal Access to Justice Act (EAJA), and was awarded a total of \$5,250.00 in attorney's fees on October 28, 2013. Plaintiff's attorney states in his instant motion that the actual award amount was \$4,535.49. If a plaintiff's attorney is awarded attorney's fees under both EAJA and 42 U.S.C. §406(b), he is obligated to refund the lesser of the two fees to the plaintiff to the extent that they represent payment for identical services.

Accordingly, it appears from the record and memoranda filed that the plaintiff's petition for attorney fees should be awarded in the amount of \$54,594.73 under the Social Security Act, 42 U.S.C. Section 406(b)(1).

**IT IS THEREFORE ORDERED** that the plaintiff's motion for attorneys fees is hereby **GRANTED** in the amount of \$11,020.00.

**IT IS FURTHER ORDERED** that plaintiff's attorney refund \$4,535.49 to plaintiff upon

receipt of attorney's fees awarded under 42 U.S.C. §406(b)(1).

**AND IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read 'D. Norton', written over a horizontal line.

David C. Norton  
United States District Judge

September 22, 2014  
Charleston, South Carolina